IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

Bail Appl..No. 4085 of 2007()

[CRIME NO.508/2007 OF NEDUMANGAD POLICE STATION]

PETITIONERS/ACCUSED 1 & 2

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1. SIMON C.,
KOLLAMKARA, VADAKUMKARA KUZHIVILLA VEEDU,
PAZHAKUTTY P.O., NEDUMANGAD.

2. B.GEORGE,
KOLLAMKARA, VADAKUMKARA KUZHIVILLA VEEDU,
PAZHAKUTTY P.O., NEDUMANGAD.

BY ADV. SRI.S.GOPAKUMARAN NAIR
SRI.S.GOWTHAM

RESPONDENTS:

SUB INSPECTOR OF POLICE,
NEDUMANGAD POLICE STATION, THIRUVANANTHAPURAM,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4085 of 2007

Dated this the 6th day of July 2007

O R D E R

Application for anticipatory bail. The petitioners, son and father, face allegations inter alia under Section 308 read with 34 I.P.C. They are alleged to have trespassed into the property of the de facto complainant and attacked him with dangerous weapons. The offence was allegedly committed on 23/6/2007. The F.I.R has been registered. Investigation is in progress. The petitioners apprehend imminent arrest. The learned counsel for the petitioners submits that the first petitioner is ill and the second petitioner is a person aged about 65 years. The learned counsel for the petitioner submits that the allegation under Section 308 I.P.C had been included with vexatious intent to detain the petitioners in custody for as long a period as possible. The de facto complainant has questionable antecedents, it is further submitted. In these circumstances, anticipatory bail may be granted to the petitioner, prays the learned counsel for the petitioner.

2. The learned Public Prosecutor opposes the application. The learned Public Prosecutor has taken me through the nature of the injuries suffered by the victim to point

out that it is not a case where Section 308 I.P.C is unjustifiably included by the investigator.

3. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the investigating officer or the learned Magistrate having jurisdiction and seek regular bail in the normal and ordinary course. I do not find any circumstances which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

3. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate having jurisdiction and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007